

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Willis Weary, #283431,)	Civil Action No.: 9:17-cv-2618-AMQ
)	
Petitioner,)	
)	
v.)	<u>ORDER</u>
)	
Warden of Ridgeland Correctional)	
Institution,)	
)	
Respondent.)	
_____)	

Petitioner Willis Weary ("Petitioner"), proceeding *pro se*, filed this habeas relief action pursuant to 28 U.S.C. § 2254. (ECF No. 1.) In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c), D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant, for pre-trial proceedings and a Report and Recommendation ("Report").

On February 9, 2018, Respondent Warden of Ridgeland Correctional Institution ("Respondent"), filed a Motion for Summary Judgment and a Return and Memorandum of Law in Support of Motion for Summary Judgment asserting the Petition should be summarily dismissed. (ECF Nos. 15 & 16.) Since Petitioner is *pro se* in this matter, the Court entered an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) on February 12, 2018, advising Petitioner of the importance of a dispositive motion and of the need for him to file an adequate response to Respondent's motion. (ECF No. 17.) In that order, Petitioner was advised of the possible consequence of dismissal if he failed to respond adequately. Petitioner, however, failed to respond to the motion, or to contact the Court in any way.

On March 27, 2018, Magistrate Judge Marchant issued a Report recommending this action be dismissed without prejudice for lack of prosecution after consideration of the criteria for dismissal under *Chandler Leasing Corporation v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982).

(ECF No. 19.) The Magistrate Judge advised Petitioner of his right to file specific objections to the Report. (ECF No. 19 at 3.) Petitioner filed no objections and the time for doing so has expired.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court may accept, reject, or modify, in whole or in part, the Report or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). Furthermore, failure to file specific written objections to the Report results in a party’s waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); see *Wells v. Shriners Hosp.*, 109 F.3d 198, 200 (4th Cir. 1997) (“[t]he Supreme Court has authorized the waiver rule that we enforce... ‘[A] court of appeals may adopt a rule conditioning appeal, when taken from a district court judgment that adopts a magistrate’s recommendation, upon the filing of objections with the district court identifying those issues on which further review is desired.’”) (citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985)).

After a thorough review of the record of this matter, the applicable law, and the Report of the Magistrate Judge, the Court finds no clear error on the face of the record. Accordingly, the Court adopts and incorporates the Report and Recommendation (ECF No. 19) by reference into this order.

It is therefore ORDERED that Respondent’s Motion for Summary Judgment (ECF No. 16) is GRANTED. The federal Petition in this case is dismissed, without prejudice for

lack of prosecution.

IT IS SO ORDERED.

/s/ A. Marvin Quattlebaum, Jr.
United States District Judge

Greenville South Carolina
April 27, 2018

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.